From: root
To: Microsoft ATR
Date: 11/16/01 2:21pm
Subject: Microsoft settlement

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CC: daly@idsi.net@inetgw,remote_bob@yahoo.com@inetgw,s...

Your Honor, the Court and the Department of Justice,

I am lead to believe that this address is the proper place to forward opinions on the ongoing Microsoft trial. Please find mine attached.

Conclusions:

If the Court decides to follow thru with this settlement we will be back in the situation we had in 1995. The world will be waiting another 5 years until Microsoft's behavior requires yet another monopoly trial. A quick settlement that does not resolve the root cause of the problem is not in the public interest.

Prosecute and restrain the bundling, tying, code-mingling. This issue is the "root cause" and if this is not restrained there will be no effective market for software. I understand that the higher Court has changed the criteria but this item MUST be pursued and restrained. IBM was forced to "unbundle" it's hardware and software. It was further required to publish interface specifications. Why can't such a remedy apply to Microsoft?

Microsoft should be required to ship every application in a separate, shrink-wrapped form that can be installed or removed at will. This is clearly technically possible because it is what every competitor must do. The playing field should be level and require the same behavior by Microsoft.

A three person "oversight" panel that is unable to report concerns to public review is useless as an effective vehicle for restraint. It is also too small to police any judgement.

Who I am:

I'm a programmer with 30 years experience. I've worked on software ranging from applications (e.g. Axiom, a computer algebra system), languages (ECLPS, an expert systems language), compilers (AMLX, a robotics automation language), operating systems (VM/370, writing the free storage algorithm) and networking (Pinger, an network monitoring software package).

Biases and Affiliations:

I've worked for IBM Research, Approach (Microsoft NT consulting), Centrport (Web Advertising) and Worldcom (Networking).

What my interest is:

Microsoft has a pervasive effect on me and the industry that has been my career. I've watched the changes over the last 30 years and I have concerns about the long term health of this industry.

Sources of information:

I've read every available published report from the courts including the original trial and the Court of Appeals. I've read every press release and article I've been able to find on the web.

My position on the proposed settlement:

(a) I'm appalled.

(b) I do not believe that the proposed settlement represents an effective remedy for past actions, including actions infringing the original 1995 settlement.

(c) I do not believe that the proposed settlement will be an effective deterrent to future infringing actions.

(d) I do not believe that the proposed settlement will enable other companies to compete against Microsoft.

(e) I do not believe that the negotiation team for the Justice Department understands how easily the proposal can be circumvented.

(f) I do not believe that the proposed "three person" oversight team will in any way act as an effective watchdog for Microsoft.

Comments and Opinions on the proposed settlement:

(a) I'm appalled.

Any negotiation can be measured by the fact that it finds a middle ground between opposing forces. Except for Microsoft I find, and hold the opinion that, this proposed settlement is widely seen as unjust, unfair, unworkable and outrageous.

The argument has been given that this trial will last another year or two and that it is in the "public interest" to settle this trial now. If the current behavior is so damaging that we require relief immediately rather than full and fair relief why doesn't the DOJ just request a restraining order from the Judge?

Why are we not fixing the "root cause" of the Microsoft problem? I'm technically skilled enough to advise you that THE KEY ISSUE that needs to be restrained is the bundling (integration, or to use Microsoft's misuse of the word: "innovation"). The Appeals Court remanded this issue to the lower Court to be resolved. If you don't pursue this issue you have NOT solved the problem. The software market will NOT thrive and consumers (and myself) will be harmed.

Why is there no discussion of XP and future operating systems? It is clear to me, as an expert in the field, that XP is a glaring example of using bundling, tying and code-mingling (none of which are technically justified) to pursue monopoly maintenance. It is not acceptable to ignore XP as part of any settlement.

If the DOJ decides to follow thru with this settlement we will be back in the situation we had in 1995. The world will be waiting another 5 years until Microsoft's behavior requires yet another monopoly trial. A quick settlement that does not resolve the root cause of the problem will is not in the public interest. It will simply delay justice another 5 year.

(b) I do not believe that the proposed settlement represents an effective remedy for past actions, including actions infringing the original 1995 settlement.

Microsoft agreed with the DOJ and the Court in 1995 that it would take steps which would stop it's infringing behavior. Moments after the agreement was signed Bill Gates publicly declared that he could effectively ignore the agreement. Which he did. Claiming the right to "innovate" but pursing a technically unjustified scheme of bundling Microsoft has continued to build and maintain it's monopoly position.

This proposed settlement is not even accepted yet and Bill Gates has already stated that he is happy that "this issue is behind us". Microsoft will not willingly change it's behavior to pursue something that is not in it's best interest. Indeed, to make such a change would be illegal as the company is required by law to operate in the best interest of it's stockholders. The new settlement MUST be coercive. This one requires behavior changes that have no effect on the market or future infringing behavior. It restrains prior but abandoned behavior.

(c) I do not believe that the proposed settlement will be an effective deterrent to future infringing actions.

At the heart of this case is the issue of bundling, tying and code-mingling. Microsoft has NO TECHNICAL JUSTIFICATION for

this. The pure reason for such actions is to tie one product to another in such a way that they are both required by design but not by function.

Microsoft should be required to ship every application in a separate, shrink-wrapped form that can be installed or removed at will. This is clearly technically possible because it is what every competitor must do. The playing field should be level and require the same behavior by Microsoft.

(d) I do not believe that the proposed settlement will enable other companies to compete against Microsoft.

According to the proposal Microsoft is capable of deciding what parts of the system will be available for publication. There are no outside experts to question their "judgement". How are we to know that some portions of the code and API are "security related"? Microsoft said so.

Surely you jest. Does the Court believe that statements about infringing actions by Microsoft should be taken at face value? Is the oversight panel capable of reviewing the reputed many million lines of code to dispute the claim? If the review panel disputes the claim and the DOJ disagrees will anyone ever know? Will the public be informed? Will it be entered into Court records?

Without proper API and interface specifications it is not possible to write competing code. Without restraining Microsoft against changing published specifications a competitor's code is at the mercy of changes it cannot control but Microsoft can.

Microsoft should, like IBM before it (the disk drive case), be required to publish specifications of their APIs. They should be required to maintain backward compatible specifications in the case of changes.

Microsoft should also be required to ship products in a separate, shrink-wrapped form through channels that are available to competitors. If the programs are installed by OEM manufacturers then the shrink-wrap versions should be shipped with the equipment. It should be possible to install and uninstall every application. This is not only technically possible (contrary to Microsoft's testimony) but is exactly the situation faced by every competitor.

Without at least these controls there is no competition.

(e) I do not believe that the negotiation team for the Justice Department understands how easily the proposal can be circumvented.

Programming is a subtle art. I've been doing it for 30 years. Given the proposed settlement I could easily make it worthless. While I have great respect for the legal skills of the Court and the DOJ I feel that neither party understands how easily the proposed restraints are ignored and how little effect they can have to ensure effective competition. Bill Gates is technically savvy enough to be aware of this. He is making a mockery of the Court and you don't even understand how.

(f) I do not believe that the proposed "three person" oversight team will in any way act as an effective watchdog for Microsoft.

If a breakup is not the final result of this proceedings then the Court MUST ensure that there are a sufficient number (much more than 3) of technically capable people to provide oversight to any final ruling.

Microsoft claims (though it is obvious nonsense technically) that XP has many millions of lines of code. I know that the API specifications number in the many thousands. Surely the Court does NOT believe that a 3 person panel, one of which is appointed by Microsoft, can possibly police a judgement.

With all due respect,
Tim Daly
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Nov 16, 2001